

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:15-cr-10271-WGY

4

5 UNITED STATES OF AMERICA

6

7 vs.

8

9 ALEX LEVIN

10

11 \*\*\*\*\*

12

13 For Hearing Before:  
14 Judge William G. Young

15 Sentencing

16

17 United States District Court  
18 District of Massachusetts (Boston.)  
One Courthouse Way  
Boston, Massachusetts 02210  
October 9, 2019

19

20 \*\*\*\*\*

21

22 REPORTER: RICHARD H. ROMANOW, RPR  
Official Court Reporter  
United States District Court  
One Courthouse Way, Room 5510, Boston, MA 02210  
23 bulldog@richromanow.com

24

1 A P P E A R A N C E S  
2

3 ANNE PARUTI, ESQ.  
4 United States Attorney's Office  
One Courthouse Way, Suite 9200  
Boston, Massachusetts 02210  
(617) 748-3310  
E-mail: Anne.paruti.lohnes@usdoj.gov  
6 For the United States of America  
7

8 J.W. CARNEY, JR., ESQ.  
9 DANIEL J. GAUDET, ESQ.  
J.W. Carney, Jr. & Associates  
10 20 Park Plaza, Suite 1405  
Boston, Massachusetts 02116  
(617) 933-0350  
11 Email: jcarney@carneydefense.com  
for the defendant  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 P R O C E E D I N G S

2 (Begins, 2:30 p.m.)

3 THE CLERK: Now hearing Criminal Matter 15-10271,  
4 the United States of America versus Alex Levin.

5 THE COURT: Good afternoon. Would counsel  
6 identify themselves.

7 MS. PARUTI: Good afternoon, your Honor, Anne  
8 Paruti for the government.

9 MR. CARNEY: Your Honor, good afternoon, I'm J.W.  
10 Carney, Jr. for Alex Levin.

11 MR. GAUDET: Daniel Gaudet, also for Alex Levin.  
12 Good afternoon.

13 THE COURT: Good afternoon. If I may address,  
14 Mr. Levin?

15 Mr. Levin, have you read the presentence report  
16 that's been prepared in your case?

17 THE DEFENDANT: I have.

18 THE COURT: Have you talked it all over with your  
19 attorney?

20 THE DEFENDANT: I have.

21 THE COURT: Do you think you understand it?

22 THE DEFENDANT: I do.

23 THE COURT: Please be seated.

24 Nothing has been withheld from the presentence  
25 report under the rules of criminal procedure?

1 PROBATION OFFICER: No, your Honor.

2 THE COURT: Thank you.

3 This is a sentencing that proceeds under 18 United  
4 States Code, Section 3553(a). Sentencing in this  
5 session of the court proceeds in four steps, the first  
6 three of these steps are largely arithmetic.

7 First, I calculate the highest sentence that, as I  
8 understand the Constitution, is constitutionally  
9 permissible. That sentence is the top of the applicable  
10 guidelines without any regard to any mitigating factors.

11 Second, I make reference to the average sentences  
12 for offenses of this sort. I do not sentence from any  
13 average, but the averages are not insignificant because  
14 they inform the Court as to the weight to be given to  
15 the now advisory sentencing guidelines.

16 Third, I accurately calculate, as is required by  
17 law, the sentencing guidelines.

18 And then fourth, I -- and most important, we have  
19 a discussion to fashion a fair and a just sentence for  
20 Mr. Levin having in mind the specific facts of the case,  
21 the needs of society, and his particular circumstances.

22 Now in this case -- you will understand that in  
23 this case I have read the briefs, I have read the most-  
24 recently filed, or they were filed recently, victim  
25 impact statement. I believe I'm prepared for your

1 arguments.

2 So as to the first steps, um, and, Mr. Carney, you  
3 challenge certain enhancements in the presentence  
4 report, and why don't you point out what those  
5 enhancements are and I will hear you in those  
6 challenges.

7 MR. CARNEY: There are three sentencing  
8 enhancements, your Honor, to which we object. The first  
9 is the use of a computer. The second is prepubescent  
10 minors. And the third is sadomasochistic images.

11 THE COURT: I'll hear you.

12 MR. CARNEY: May I have one moment, please, your  
13 Honor?

14 THE COURT: Of course you may.

15 (Pause.)

16 MR. CARNEY: I also object to the enhancement for  
17 more than 600 images.

18 THE COURT: Very well. Go ahead.

19 MR. CARNEY: The enhancements contained in the  
20 sentencing guidelines were included in the very first  
21 sentencing guidelines that was set forth. At the time  
22 these guidelines were created, the use of a computer was  
23 nowhere near as prevalent as it is now. It really made  
24 a difference if there were prepubescent minors in there,  
25 it made a difference if there were sadomasochistic

1 images, and it made a difference if you attributed 75  
2 images for every video. Now we have the data of how  
3 these enhancements have continued to be used.

4 In particular, at one time the sentencing  
5 enhancements were viewed as warranted because of these  
6 additional things that the defendant had done, but now  
7 we know that it's not so aberrational.

8 THE COURT: Well let me -- I guess -- let me say  
9 this to you.

10 I consider myself constrained by the -- at least  
11 the highest possible sentence by the top of the  
12 sentencing guidelines, so if you were to persuade me not  
13 to include any one of the challenged enhancements, that  
14 could -- that would reduce the guideline calculation and  
15 would limit the highest sentence that I could give. But  
16 your argument -- I view the guidelines in a quasi-  
17 statutory sense, but they are only guidelines. We're  
18 going to get to your appendices, which I want to ask you  
19 about, but not now, where you list a large number of  
20 sentences in this court, by myself and many of my  
21 colleagues, all of them below guideline sentences. I  
22 intend to at least ask you about that in figuring the  
23 average sentence to understand the weight I should give  
24 to the guidelines, and that's what you're arguing, the  
25 weight I should give to these guidelines. But under the

1 law, I must accurately calculate the guidelines. So the  
2 fact that the sentencing commission hasn't updated them  
3 may well go to the weight I give to the guidelines, but  
4 it has little effect on the language which the  
5 sentencing commission has used in light of the offense  
6 characteristics borne out by trial.

7 You go ahead.

8 MR. CARNEY: I submit, your Honor, that addressing  
9 these enhancements prior to coming up with a final  
10 guideline sentence is important. In fact if the four  
11 enhancements that I suggest are not to be applied to  
12 this case, I believe the guideline sentence would go  
13 down 18 points, which is an extremely significant  
14 amount. And therefore, if that affects what the  
15 guideline are, then the Court -- and the Court intends  
16 to depart downward from this revised guideline number,  
17 then the Court I think is more likely to impose a lower  
18 sentence because the sentencing guidelines are lower  
19 when you subtract the four enhancements.

20 THE COURT: I'll hear you, but you seem to be  
21 arguing policy whereas I'm looking at these as though  
22 they were a statute, even though they're not, they're  
23 really just a guideline.

24 Go ahead.

25 MR. CARNEY: I understand. But the point is that

1 at one time the use of a computer was viewed as a fact  
2 that makes that crime, 25 years ago, more significant.  
3 The guidelines haven't been revised but the sentencing  
4 commission has noted itself that use of a computer is  
5 present in 96 percent of the cases. So therefore,  
6 despite the fact that the sentencing guidelines  
7 commission, the sentencing commission has not revised  
8 it, the Court can make a ruling that this enhancement  
9 should not apply because it is so outdated, and  
10 therefore if I don't apply this enhancement, then the  
11 guideline numbers go down.

12 And it's the same argument for the prepubescent  
13 minor, at one point that was viewed as aberrational, now  
14 it too is applied or is contained in 96 percent of the  
15 cases.

16 As the Court knows, there's a core guideline and  
17 then there are enhancements that are supposed to apply  
18 to more serious offenders because of the uniqueness of  
19 that enhancement, but they don't work any more and I  
20 submit that virtually every judge in this district has  
21 acknowledged that.

22 The third one and the fourth one similarly are no  
23 longer abberational. The defendant, in this case, had  
24 13 videos, that puts him over the 700 individual  
25 photographs. Well now people have many more videos than

1       in the past and that again should not be an enhancement  
2 especially when it's as modest as this is. There are  
3 cases that have thousands and thousands, tens of  
4 thousands, even hundreds of thousands of photographs and  
5 videotapes, and the Courts have cited that this  
6 guideline shouldn't apply.

7           THE COURT: Well actually that last argument, when  
8 you say today that's not aberrational, doesn't that  
9 suggest that maybe -- and I'm not saying it does, but  
10 maybe more severe sentences are warranted because the  
11 sentences being imposed are insufficient to curb the  
12 appetite for this disgusting type of -- and it is, no  
13 doubt about it, sexual abuse of actual children?

14           MR. CARNEY: Well --

15           THE COURT: The fact that we don't have more of it  
16 is hardly an argument for a more lenient sentence.

17           MR. CARNEY: Well let me address those two points.  
18 This is a horrible crime, but, um, I'll first talk about  
19 my only personal experience.

20           When I was a public defender in the late '70s and  
21 would be assigned a child pornography case, I'd been  
22 surprised that it was treated so seriously when I  
23 thought the only thing the offender did was look at  
24 photographs, he didn't -- he wasn't involved in taking  
25 the photograph, nor was he involved in distributing the

1 photograph, he merely looked at it. And I wondered,  
2 isn't that comparable to someone who wants to look over  
3 and over again at a video of a horrendous accident where  
4 two people in a convertible were decapitated when the  
5 car went underneath a truck, and the person liked  
6 looking at those photos? That did not do any further  
7 damage to the victims in that car, it's kind of puerile,  
8 but so be it. And I thought that was the same way to  
9 look at child pornography cases. But I now know  
10 differently. I now am convinced 100 percent that there  
11 is a harm done to the young women who are depicted on  
12 these photographs and videos for the exact reason that  
13 they say, because they grow up, they see a man, they  
14 think he has seen the video of her, and it becomes very,  
15 um, just like it's a -- it's something that they carry  
16 on their back like a very heavy weight. I now  
17 appreciate that. But the reality is even -- even after  
18 a couple of years in the criminal justice system, I did  
19 not realize this until I was educated by someone who  
20 told me about the harm that it's caused.

21 The reason I relate this is virtually every single  
22 defendant that I have represented in this court on a  
23 child pornography case has said to me, "I didn't realize  
24 I was doing harm to these girls, I thought I was just  
25 looking at pictures," and that's the case with my

1 client. He obtained these, he really didn't even look  
2 at them, and he didn't realize the harm that was caused  
3 by his having these. He now does, your Honor. He's  
4 been educated by me, in large part, and not by society,  
5 not by deterrent effects, he figured he's not  
6 distributing this, he's not making this, he's just  
7 looking at the pictures.

8 And so it's an unusual criminal who did not  
9 realize the severity of the crime he was committing at  
10 the time he committed it. And so as horrible and  
11 disgusting as these cases are, you get good men, like  
12 Alex Levin, well-educated, hardworking, a beloved father  
13 of his daughter, and he finds himself in this court  
14 charged with this? I just need to emphasize that my  
15 client, like so many others, did not appreciate the harm  
16 that he was causing, but he now does and is so  
17 remorseful for it.

18 THE COURT: Thank you. We'll be back to you.

19 Ms. Paruti, on the issue of the enhancements and  
20 the guideline calculation, I'll hear you as to that.

21 MS. PARUTI: Your Honor, to answer your question  
22 directly, I agree with probation's calculation as it's  
23 laid out in the PSR. If the Court would like to hear my  
24 response to Mr. Carney's argument about how much you  
25 should weight the guidelines based on the arguments he

1 has made, I'm happy to reserve that until you're ready  
2 for it or address it now.

3 THE COURT: Reserve the weight. You're answering  
4 me directly and I appreciate it. But his argument is  
5 that these are dated guidelines and that the channels of  
6 distribution and the facts of, um, sad though they are  
7 of what's available on the dark web, are such that this  
8 is far from abberational conduct. There's truth to  
9 that. What do you say?

10 MS. PARUTI: Well, your Honor, I think that, um --  
11 actually one of the comments that you made sort of  
12 addresses part of his argument squarely, and noting  
13 that, um, it's not a good argument to say that because  
14 there's so much more of this now, because it's so  
15 persuasive, we must treat it less severely or less  
16 harshly. And I think that when you're talking about  
17 whether or not certain offenders who come before federal  
18 court judges, um, all nowadays might tend to be ones who  
19 do qualify for the application of these particular  
20 enhancements, I would suggest that that's a symptom of  
21 the fact that this crime is so persuasive and it is so  
22 abundant, which this Court knows, this defense counsel  
23 knows -- the Court may know there was press coverage  
24 recently about how inundated the law enforcement is  
25 across the country, maybe even across the world with

1       this problem, that law enforcement is necessarily  
2       required to focus its investigative efforts on the  
3       people who commit the most heinous versions of this  
4       crime. And how do we know what are the most heinous  
5       versions? Well we look at things like the age of the  
6       children depicted, we look at the number of images that  
7       people have -- and I'll address that separately actually  
8       as well, we look at the type of behavior, whether or not  
9       it's sadistic or represents or shows, I should say, the  
10      sexual exploitation of a toddler or a baby, these are  
11      all factors that objectively, um, the -- and here the  
12      commission has identified these as factors that should  
13      be weighted heavily in assessing the severity of the  
14      defendant's violation in this realm.

15           THE COURT: All right.

16           MS. PARUTI: And with respect actually to the  
17      number of videos or the number of images -- and I  
18      referenced this, um, briefly in my written submission,  
19      but nowadays where -- we're not talking about magazines  
20      or printed pictures, we're talking about videos which,  
21      um, any person who has had to sit, as a function of  
22      their job, like me, like the police officers and federal  
23      agents who have to investigate and choose to dedicate  
24      their lives to investigating and prosecuting these  
25      crimes, to sit and watch a video is one of the starker

1 reminders that a human being can have about what the  
2 reality of the harm is that is caused by people who  
3 choose to do that. Not those that are required to  
4 protect children, but those who choose to do it like the  
5 defendant.

6 And so I think whether it's 8 videos, which would  
7 be enough to qualify a person for the most, um, the  
8 largest enhancement in that particular category, or  
9 whether it's 100 videos, in the government's mind there  
10 is no difference and those two people should be treated  
11 equally.

12 I will also say that defendants who now, because  
13 of the advancements in technology, which this defendant  
14 is quite familiar with, um, there are ways that  
15 offenders can access material without having to save it  
16 in their -- on their laptop hard drives or on removable  
17 media, as we are used to as practitioners in this field,  
18 and now people can access hidden services on the dark  
19 web, they can have access to terabytes of data that they  
20 can, for the most part, access with complete anonymity.

21 THE COURT: But I -- I was understanding your  
22 argument until you got into these technicals here. I'm  
23 sentencing Mr. Levin for Mr. Levin's crimes.

24 MS. PARUTI: Absolutely.

25 THE COURT: Now it's against a background -- and I

1       guess I pause to say, and so that's not him?

2           MS. PARUTI: And so it is him, and we know that  
3 from the, um -- well let me finish and I'll --

4           THE COURT: We know how he accessed it, yes, but  
5 what we know from the record in this case is how he  
6 accessed it and what he had.

7           MS. PARUTI: Right, and I guess -- let me finish  
8 that part -- the original argument about, um, access  
9 to -- originally when I started talking about that, it  
10 was in the context of the defendant's challenge to the  
11 applicability, the modern-day applicability of the  
12 number of images enhancement. And so one part of my  
13 response to that argument is talking about the value of  
14 videos, um, in this context.

15          The second part is that, um -- when Mr. Carney  
16 makes the point, in his written submission and here  
17 before you today, that there are defendants who had been  
18 prosecuted by the federal government who had thousands  
19 of images and hundreds of thousands of images, and I say  
20 nowadays you don't need to actually have that number,  
21 that collection in your possession, because it is  
22 available in a different more technologically advanced  
23 and quote, unquote "safer medium," and by that I mean  
24 the dark web. So that argument is more addressing  
25 specifically whether or not this case, where Mr. Levin

1 himself had in his possession, um, and the evidence at  
2 trial was 13 videos and images in his possession,  
3 whether or not he should be compared to --

4 THE COURT: Respectfully I don't think that  
5 argument goes anywhere and here's why. I think I  
6 understand this.

7 As Mr. Carney concedes, though he says it's hardly  
8 a proper measure of culpability, Mr. Levin possessed  
9 sufficient videos to qualify for the enhancement with  
10 more than 600 images. He concedes that. You've just  
11 argued that "Well he only had 18 videos and that  
12 qualifies and remember someone who is as skilled as he  
13 could get -- could get vastly more." But that argument  
14 would not work at least as I approach the guideline.

15 Let's say he had a portion of one video, so he was  
16 well under 600. I wouldn't allow you then to argue,  
17 "Well he could have gotten more, look at the dark web,  
18 it's all available there." The argument just doesn't  
19 prove anything either way.

20 MS. PARUTI: Well I would not make that argument  
21 in that scenario. Here I think the short answer is --  
22 to your question should this -- because the question  
23 really is twofold, I think. I think what the question  
24 you're asking is do these enhancements apply? And on  
25 their face --

1           THE COURT: It is the question at this stage, yes.

2           MS. PARUTI: Right, and the government says "Yes,"  
3 and I think Mr. Carney really academically has to say  
4 "Yes" as, you know, in advocating for his client, but he  
5 is advocating that they should not, um -- not that they  
6 do not, but that they should not. And so I think that's  
7 really where I was going with the second part.

8           THE COURT: Thank you. I understand.

9           I have a question of the probation officer. If  
10 you look at Paragraph 34 on Page 9, the enhancement for  
11 prepubescent minors, the text says to increase by 4  
12 levels, but the actual increase, as you've -- that you  
13 allocated here is 2 levels. Which is it?

14           PROBATION OFFICER: Your Honor, let me -- if I  
15 could have a moment just to look at that. My  
16 understanding is it's the 2 levels. But let me verify  
17 that.

18           (Pause.)

19           PROBATION OFFICER: Yes, your Honor, it would be 2  
20 levels.

21           THE COURT: Very well.

22           Having heard argument on the point, and believing  
23 that it's the Court's duty accurately to calculate the  
24 guidelines, I do not -- I am satisfied that each of the  
25 guidelines, on the record before the Court applies, each

1       of the enhancement applies. And so we'll calculate the  
2 guidelines now, so we're clear.

3           This is a base offense level 18. The prepubescent  
4 minor enhancement adds another 2 levels. The sadistic  
5 or masochistic conduct adds another 4. The, um -- it  
6 involved the receipt of materials on a computer, adding  
7 another 2. And the number of images adds another 5.  
8 For an aggregate of 31. His criminal history category  
9 is 1.

10         Arithmetically the guidelines are properly  
11 calculated, are they not, Ms. Paruti?

12          MS. PARUTI: I agree that they are.

13          THE COURT: Saving the arguments that you've made,  
14 Mr. Carney, arithmetically the guidelines are properly  
15 calculated?

16          MR. CARNEY: I agree, your Honor.

17          THE COURT: Very well.

18          So under the guidelines then, as this Court  
19 conceives its authority, the highest sentence the Court  
20 could impose is 135 months.

21          I do look at the sentences actually imposed for  
22 this offense. I turn first to the sentences imposed or  
23 the data from the United States Sentencing Commission,  
24 that gives me -- the most recent data gives me a whole  
25 lot of sentences, but it groups it in a way that may

1 capture significantly different conduct. Nationwide  
2 since **Booker**, if we added those -- not added, if we  
3 looked at the sentences nationwide, the median sentence  
4 for someone in criminal history category 1 nationwide is  
5 78 months. In the District of Massachusetts it is -- in  
6 the First Circuit rather, it is 63 months. In the  
7 District of Massachusetts, it is 60 months.

8 Mr. Romanow, the Official Court Reporter in this  
9 session of the court, keeps a record of all the  
10 sentences which this court has handed down, he's added  
11 on to a database started by his predecessor, Mr. Womack,  
12 and since **Booker** I have sentenced for this particular  
13 crime -- this particular crime, um, let's see, I have  
14 sentenced 8 times and the median sentence in this court  
15 is 73 months.

16 Now, um, I do want to turn, Mr. Carney, to the  
17 data you have supplied, which I said resonated with the  
18 Court and, um, I certainly rely upon you as an officer  
19 of the court, but I need to know what does this purport  
20 to be, is this all of the sentences? For instance, it  
21 doesn't seem to have all of my sentences. But I  
22 recognize that one reason is, in a number of my 8  
23 sentences, there are other offenses as well as simply  
24 knowing possession of child pornography. So you tell  
25 me, represent to me what this list shows?

1                   MR. CARNEY: Are you referring to the chart?

2                   THE COURT: I'm looking at your appendix, it  
3 starts with a 2012 sentence imposed by Judge Zobel and  
4 appears -- no, I misspoke. A 2000 -- it's right after  
5 your affidavit. After the first page of the affidavit,  
6 we go over to **Stefanadakis**, my sentence, a 2010  
7 sentence, and then it ends with a 2017 sentence from  
8 Judge Hillman. It's those two pages.

9                   How did you put that together?

10                  MR. CARNEY: What we did is we identified a child  
11 pornography case, determined what the sentence was. We  
12 were able to get the guidelines sentence in those cases.  
13 And so that we would list them to show the very  
14 significant downward departures that the judges of this  
15 court, most certainly including your Honor, have imposed  
16 here.

17                  THE COURT: But that doesn't -- you're not  
18 representing to me this is all the sentences, are you?

19                  MR. CARNEY: No, your Honor.

20                  THE COURT: All right. Because on this list  
21 anyway, there is not a single sentence that's within the  
22 guideline. Not one.

23                  MR. CARNEY: That's what I was trying to show you,  
24 your Honor.

25                  THE COURT: All right.

1           MR. CARNEY: Of course I wasn't able to produce  
2 every sentence for every child pornography charge. It  
3 would be something that is a useful -- a useful analytic  
4 that we should be looking for, but because we're all  
5 doing it just by case by case by case, there's a limit  
6 as to how much time we can devote to this.

7           THE COURT: It is, I could not agree more. I  
8 think it all ought to be public and we ought know it.  
9 In any event, I am struck by the appendix that you put  
10 before me, there's not a single sentence that's within  
11 the guidelines.

12           Very well. I've gone through the arithmetic  
13 portion of it and I think we ought to turn to fashioning  
14 a fair and a just sentence for Mr. Levin.

15           Ms. Paruti, I will turn to you first, but before I  
16 do, I want to make a general statement so that you will  
17 address it in your --

18           If I understand it, and you've been very candid in  
19 your -- in your memorandum and I appreciate it, you  
20 point out that, um, while you vigorously argue for a  
21 severe sentence, how severe is difficult, and where you  
22 come out is the bottom of the guideline. So you're  
23 going to argue to me a sentence of 108 months.

24           I've properly read your memorandum?

25           MS. PARUTI: Yes, that's correct.

1           THE COURT: Here's my concern, because I want you  
2 to argue it. I've been wrestling with the problem which  
3 commentators have pointed out about our criminal justice  
4 system, that there appears to be a penalty for  
5 exercising one's Sixth Amendment right to go to trial.  
6 Mr. Levin went to trial in this case, that is his right.  
7 He was convicted. Now I must impose sentence. But the  
8 statistics, and I have looked at the statistics, that  
9 over 96 percent of the offenders who come before the  
10 federal courts plead guilty. Under the sentencing  
11 guidelines, 97 percent, more than 97 percent of that 96  
12 percent, get three levels off for that, and it's  
13 sophistry, but what we choose to call "acceptance of  
14 responsibility." In fact it's for pleading guilty and  
15 sparing the government the burden and expense of a  
16 trial, which is the defendant's constitutional right.  
17 It seems therefore hard for the government to argue, if  
18 in 97 percent of the cases 3 levels come off the  
19 guidelines, that a sentence higher than the top of the  
20 guideline range for one who pleads -- in this case the  
21 range would be 78 to 97 months, that higher than 97  
22 months is appropriate but not greater than necessary to  
23 accomplish the goals of the criminal justice system,  
24 since like offenders who plead guilty, there would be a  
25 real issue about going higher than 97 months? If you

1 understand what I'm saying, I'm asking.

2 If one who pleaded guilty would be somewhere  
3 between 78 to 97 months in a guideline sentence, how can  
4 you argue 108 months here? And I'll hear you.

5 MS. PARUTI: So I think there's two ways to look  
6 at it, one is in the sort of abstract, which is I think  
7 how you posed it, and one is through the lens of this  
8 particular case. So I think I'll -- I think abstractly  
9 I'll comment, but I'd like to address it more through  
10 the lens of this case.

11 I understand that in federal -- especially having  
12 been a state practitioner where, um, as a child abuse  
13 prosecutor, where almost all of my cases went to trial,  
14 um, we did not have a guideline system that would -- we  
15 had a guideline system but it was not followed in the  
16 same vein that our districts courts here follow the  
17 federal guidelines. Even though they're advisory, they  
18 are of course, as the Court's admitted to doing, they're  
19 a starting point for determining what in fact is  
20 something that is in the realm of reasonableness.

21 I think even though the -- well so if you look at  
22 the 3-level discount, um, as an incentive to encouraging  
23 a guilty plea rather than a trial, I think that's -- I  
24 think that's a reasonable way to look at it, that's  
25 certainly how the government sees it, rather than as a

1       penalty post-trial for not getting it. I think  
2 especially here where we tend to have -- when we're  
3 charging cases we tend to have a very high amount of  
4 evidence, um, we tend to charge very strong cases, um,  
5 that are backed up by either physical evidence or  
6 forensic evidence, and so it may seem like a foregone  
7 conclusion to some defendants, but I think it is  
8 important to have some incentive to help defendants  
9 realize that deciding to plead guilty and waive those  
10 rights is appropriate.

11           In this particular case, notwithstanding how you  
12 view that particular shift in the guidelines, whether  
13 it's a reward or a penalty, in this particular case the  
14 question really is did this defendant accept  
15 responsibility? I understand that there are situations  
16 where defendants can test the quantum of proof that the  
17 government has, um, through a trial and may still be  
18 very accepting of their responsibility when and if they  
19 are found guilty. In this case, however, the defendant  
20 took the stand and the defendant, um, testified that he  
21 did not look for child pornography, that he did not know  
22 it was on his computer, and he gave an explanation that  
23 the government most certainly rejects as totally  
24 implausible, um, and evidently, given the proof, it was  
25 either you believe the government's version of the facts

1 or you believe the defendant. The jury clearly rejected  
2 the defendant's story to account for -- that he  
3 proffered to account for why child pornography was on  
4 his computer.

5 So I think in light of these particular facts, I  
6 don't think this is a situation where your Honor should  
7 struggle with that particular concept and whether or not  
8 this defendant is in fact being penalized for electing  
9 to go to trial because the facts certainly don't support  
10 that interpretation, I think, of this particular case,  
11 or in the context of this particular case.

12 So here I don't see that struggle whether we think  
13 it's -- I don't see that struggle here at all. And so I  
14 think that, um, the guidelines here, as they've been  
15 calculated, not taking into account that 3-level  
16 discount that is typically given to defendants who  
17 decide to plead rather than go to trial is not  
18 problematic, or I don't think it's problematic at all  
19 frankly here, your Honor.

20 I think that -- well I'll say that the government  
21 recognizes that -- and you just alluded to this, that  
22 it's very difficult to figure out what we actually mean  
23 by "severe" or, um, "lengthy" because those are terms  
24 that are completely subjective, um, and they mean  
25 different things to different people. Somebody who has

1 never served a day of jail in their life might find a  
2 two-week sentence severe and that might be appropriate  
3 for that person. For other people a lengthier time in  
4 prison subjectively to them might be deemed very severe.  
5 In this case I think there's a range of reasonable terms  
6 of incarceration that would form a reasonable punishment  
7 and a fair punishment and one that's necessary, um, and  
8 I think necessarily when there are ranges of punishment  
9 that are appropriate, um, I think you can necessarily  
10 identify places within that range without saying that  
11 one may be is more than or greater than necessary. It's  
12 a very fluid determination, as this Court knows, you've  
13 had to engage in it, um, hundreds or thousands of times.

14 Here the nature of the crime here is, um, so  
15 severe that the sentence that the government is  
16 suggesting, even though it is longer, um, than some  
17 sentences that others -- that maybe the medium of the  
18 defendants here have had imposed on them, um, it's  
19 appropriate here and it's reasonable and it's warranted.

20 And I'd like to -- I'm not going to regurgitate  
21 everything that I've put in my written submission to the  
22 Court, because it is on the public record, but I do want  
23 to just address a couple of those things that, um,  
24 counsel included in his memorandum which we basically  
25 filed simultaneously.

1           One of the most tragic pieces of this, I think, is  
2 the fact that the defendant is a father, and I'm not  
3 saying that it's tragic for him, although it certainly  
4 is, I'm sure, um, but it's tragic for his child. And  
5 the government, um -- the problem however with using  
6 that as a mitigating factor for the Court's  
7 consideration when you're trying to determine what is  
8 reasonable and fair here, I think the lens is a little  
9 twisted.

10           The focus should not be on how Mr. Levin's  
11 punishment will affect his child, the focus that should  
12 properly be taken by the Court is about how the  
13 defendant's crime has affected his child. This is a  
14 defendant who, when he was a father, when he was playing  
15 this role for a child who was, um, based on the child  
16 pornography that we saw, around the same age as some of  
17 the kids in the videos that he had on his computer, the  
18 defendant should have reasonably foreseen the effect,  
19 the consequences of that behavior, illegally accessing  
20 videos and keeping videos on his computer of young  
21 children, some as young as toddlers, being sexually  
22 abused by adults, he should have foreseen that that  
23 could carry the consequences that he is facing today,  
24 and he should have foreseen, especially as a father, how  
25 that would impact his family, specifically his daughter.

1           So I object to the Court considering it as a  
2 mitigating factor on his behalf, it most certainly, in  
3 the government's view, is an aggravating factor. This  
4 is a person who is using his -- now he's -- and I don't  
5 mean to disparage the argument at all, I understand it,  
6 but I want to be realistic here, that this is a person  
7 who is touting himself as a father and that frankly is  
8 the piece that comes out, um, I think most obviously in  
9 the filing. When we're talking about his -- the nature  
10 and characteristics of this defendant, that is one of  
11 the most positive aspects in here. Of course there's  
12 talk about him being a good friend, I know he has family  
13 support and friends, some of them are present in the  
14 courtroom today, but the fact that he holds that role  
15 and committed this type of violation against other  
16 children, um, should be viewed as something that  
17 militates against him and against the request for a  
18 deeply-discounted sentence, a variance all the way down  
19 to, I think, 18 months is what the defendant is asking  
20 for.

21           THE COURT: Thank you. Mr. Carney?

22           MS. PARUTI: I'm happy to answer any other  
23 questions you have, but I think I've addressed all the  
24 issues that need your attention. Thank you.

25           THE COURT: I believe you have. I'll hear

1       Mr. Carney.

2                   MR. CARNEY: As your Honor may know, I have been  
3       in the criminal justice system now for 41 years. I know  
4       there are people in this courtroom who have been in it  
5       longer, but, um, I think mine's a fairly significant  
6       number of years devoted to the criminal justice system  
7       either as a public defender, a state court prosecutor,  
8       or now in private practice.

9                   I often receive journals or other things brought  
10      to my attention on the web that talk about sentencing.

11                  (Pause.)

12                  MR. CARNEY: I'm just waiting for your Honor to  
13      finish reading.

14                  THE COURT: No, no, go ahead.

15                  MR. CARNEY: And I read a lot of materials by  
16      penologists who are talking about imprisonment and what  
17      many of them say -- what many of them say is the ideal  
18      construct of a criminal justice system is the following.  
19      A person commits a crime. He is immediately sentenced  
20      to incarceration for that crime. After a certain amount  
21      of time, he is put in a halfway house and then allowed  
22      to remain on the street on supervised release. That is  
23      an ideal way that the criminal justice system should  
24      work, and it rarely ever does. But I think in this case  
25      it did work. Mr. Levin was arrested, charged with

1 possessing child pornography, he was held without bail.  
2 He spent 8 months in a maximum security facility before  
3 the Court amended the bail after allowing the  
4 defendant's motion to suppress the evidence. So  
5 Mr. Levin now was released on bail on significant  
6 conditions. He has remained in that setting, or he  
7 remained in that setting for about 3 years. And  
8 periodically I would approach the Court to seek to  
9 lessen some of the restrictions on him and I was  
10 supported, in every instance, by the probation  
11 department, that thought taking away this restriction  
12 would be useful. It might have been a curfew he was on  
13 or it might have been allowing him to work a particular  
14 job.

15 He got a very good job at Amazon. He was not  
16 terribly restricted in his activities, he could  
17 routinely get permission, for example, to go to New York  
18 to attend the Bar Mitzvah of his daughter -- or the Bat  
19 Mitzvah. And in an ideal way this case has met that  
20 idealistic goal, that a person commits a crime, he's  
21 punished, he's incarcerated, then after being  
22 incarcerated for a significant period of time, 8 months  
23 -- which is very significant for someone who has never  
24 been in a prison, and then he's out. And he has proven  
25 over the 3 years that he was released, until the end of

1       this trial, that he was not a danger to society, that he  
2       was not a criminal, that he was not someone that the  
3       Court could worry about would be committing another  
4       crime.

5           The deterrence that he had from 8 months in  
6       prison, locked away from his daughter, was all the  
7       deterrence that he needed. He will never ever ever  
8       again jeopardize his freedom by doing something as  
9       foolish as saving child pornography.

10          He has gone back to work. Throughout his life  
11       he's been a very hard worker. He not only has stayed  
12       away from anything to do with child pornography, but  
13       this Court permitted, with the support of probation,  
14       that he obtain a job in which he would use a computer.  
15       A monitoring device was put on that computer to ensure  
16       that nothing illegal was ever viewed. And in the 3  
17       years that Mr. Levin has been on release, he didn't  
18       have, to my knowledge, a single violation of any term of  
19       release. If he had to be home at a particular time, he  
20       was there. If he would be permitted out to do a  
21       particular task, he was let out, did the task, and  
22       returned home. He has strictly observed everything that  
23       this Court has set for him as a condition of his being  
24       on bail.

25           And so in an ideal world, Mr. Levin should simply

1       be placed on further supervised release so that he can  
2       continue all the good things he's been doing. The 8  
3       months in prison was enough for this man, just like it  
4       would be enough for virtually any person who is well-  
5       educated, hardworking, a dedicated father to his  
6       daughter, and at one time downloaded these videos. He  
7       has learned his lesson completely. And to start him  
8       over again in sending him to prison, and he'll have to  
9       reacclimate to that, and then he will eventually be  
10      released, back on supervised release for 5 years, which  
11      I'm convinced he will do as well as he has done over the  
12      past 3 years.

13           So in a system where you're trying to emphasize to  
14       someone that he has done a crime, that goal was met when  
15       he was immediately incarcerated.

16           Having it be a deterrent effect on a defendant.  
17       Well Mr. Levin has no prior criminal activity whatsoever  
18       in his life, he's never acted as a criminal. And as I  
19       mentioned, he didn't even see the harm he was doing in  
20       looking at these photos.

21           It has deterred others, because just as Mr. Levin  
22       has lost all hope of having an employment that will  
23       really use his skills, he's had other devastating  
24       aspects in his life. His mother died while he was in  
25       custody. His father died two days ago while he was in

1 custody. Those two acts were acts that he had to deal  
2 with, the consequences, alone by himself in a prison  
3 cell. And as he told me this morning, you don't get a  
4 lot of ability to deal with the loss of a loved parent  
5 when you're in a prison, it will show weakness, and you  
6 can never show weakness in prison. So he had these two  
7 events of his parents dying within four months of each  
8 other and consoling himself alone in a cell in a prison.

9 I think that the rest of my argument is contained  
10 in the memorandum. I know your Honor reads that  
11 carefully. I don't want to belabor anything. I'll end  
12 with this.

13 Alex Levin is a good man. Everybody would say  
14 he's a good man. He's a man who made a mistake. The  
15 punishment he has received to date is enough. But  
16 notwithstanding that, I'm asking for a sentence of 18  
17 months. Mr. Levin will return to the prison setting.  
18 He will be able to prepare for being released fairly  
19 soon. There can be actions taken in the prison that  
20 will help him even more to do well on supervised  
21 release. And then when he comes out, he'll be on  
22 supervised release for 5 years.

23 I'm not saying that anyone is responsible for the  
24 hurt to his own daughter for doing this, more the hurt  
25 that was suffered by these victims when their videos

1       were viewed by Mr. Levin. But the essential point here,  
2       your Honor, is you can take into consideration the  
3       impact of a child from the father's incarceration, and  
4       that's another ground for a variance. And I would thank  
5       your Honor completely for listening so carefully to my  
6       argument.

7                  THE COURT: Thank you.

8                  Mr. Levin, you have the right to talk to me  
9       directly. You are not required to. If you want to,  
10      I'll hear you now.

11                 THE DEFENDANT: I would like to, your Honor.

12                 First of all, I'd like to sincerely and profoundly  
13       say I'm sorry to the real victims, the real victims I  
14       now understand about, I now know the real victims of  
15       this. When I was doing this, as Mr. Carney stated, I  
16       honestly, you know, in my heart didn't think what I was  
17       doing was a crime. I now understand what I've done and  
18       I will think about this for the rest of my days.

19                 I can't stop thinking about my daughter and what  
20       this has done to her. The prosecution is correct, what  
21       I did while being a father, I should have known better.  
22       She is absolutely devastated by this. She and I are  
23       very very close, always have been.

24                 When I was initially incarcerated in 2015, it was  
25       8 months, and I know she cried herself asleep every

1 night. Now that I've been out on bail, on probation for  
2 3 years, we tried -- we've grown, you know we've  
3 reattached. In her mind she thinks that, you know, I'm  
4 back in her life. And this is on me. I should have  
5 done a better job managing her expectations. But she  
6 thinks I'm back in her life.

7 I'm grateful to your Honor for allowing me to go  
8 to her Bat Mitzvah. It was in Philadelphia. It's not  
9 too far to travel, but you have no idea how much it  
10 meant to her. I don't even want to think what she'd  
11 think if I wasn't there.

12 I'd like to thank the circle of my loved ones,  
13 most of them right now are at the temple, today's the  
14 highest holiday, um, most of my friends are religious  
15 and today's Yom Kippur, the highest Jewish holiday, and  
16 I got to go there to Seder and pray. I can do more good  
17 there than here. Clearly some of them didn't give up on  
18 me and I thank them.

19 Your Honor, I may have a done a terrible thing,  
20 but I'm not a terrible person. I worked very very hard  
21 all my life, I've been a model dad and a great dad.  
22 When this nightmare is over, there's only two things  
23 that I want to do, I want to be there for daughter and I  
24 want to pass my time and work very very hard and be a  
25 productive member of society that I was prior to this.

1       Thank you, your Honor.

2                     (Pause.)

3                     THE COURT: Mr. Alex Levin, in consideration of  
4       the terms of 18 United States Code, Section 3553(a), the  
5       information from the United States Attorney, your  
6       attorney, the probation officer and yourself, this Court  
7       sentence you to 6 years and 6 months -- 78 months in the  
8       custody of the United States Attorney General. The  
9       Court gives you credit toward the service of that  
10      sentence from August 12, 2015 to April 26th, 2016, and  
11      from May 30th, 2019 to the present.

12                  The Court imposes upon you no fine due to your  
13      inability to pay a fine. The Court places you on  
14      supervised release following your imprisonment for 5  
15      years with all the general conditions of supervised  
16      release and the, um, following special conditions.

17                  You are required to register pursuant to the Adam  
18      Walsh Child Protection and Safety Act. You must  
19      participate in a sexual-specific evaluation as required  
20      by the probation office. You must submit to periodic  
21      polygraph testing. You must allow the installation of  
22      computer internet monitoring software. You must advise  
23      anyone using the monitored internet-capable devices,  
24      that those devices are being monitored by probation.  
25      You must not possess or use any computer or internet-

1 capable device without prior permission from the  
2 probation office. You must disclose all account  
3 information relative to internet access. You must  
4 provide the probation officer with access to requested  
5 financial information.

6 You must not knowingly have direct contact or  
7 contact to a third-party with children under the age of  
8 18 years, unless previously approved by the probation  
9 office. This is not intended to restrict your contact  
10 with your daughter. You must not knowingly have any  
11 contact with victims without a prior approval. You must  
12 consent to third-party disclosure to any employer.  
13 Prior to accepting any form of employment, you must seek  
14 the approval of the probation office. You shall be  
15 required to contribute to the cost of evaluation and  
16 treatment to the extent of your ability to pay.

17 No restitution is decreed at this time. The Court  
18 will schedule, within 90 days of today's date, a hearing  
19 on the matter of restitution. Let me explain this  
20 sentence to you.

21 You have done a terrible thing. You're not a  
22 terrible person. I acknowledge that. You are not a  
23 terrible person. But this is no mistake. And in the  
24 doing of it, it encourages, it enables one of the most  
25 hideous forms of child sex abuse of which we are aware

1 and we have chosen to deal with it by sentencing  
2 offenders who receive such material. This is a just and  
3 a fair sentence and I have no hesitancy in imposing it.

4 You of course, having reserved the right to the  
5 trial, you have a right to appeal from any findings or  
6 rulings the Court has made against you. Should you  
7 appeal and should your appeal be successful, in whole or  
8 in part and the case remanded, you'll be resentenced  
9 before another judge. Mr. Carney, if an appeal is  
10 decided upon, you want transcript, seek it from this  
11 session of the court because I'll turn it around right  
12 away.

13 Do you understand?

14 MR. CARNEY: May I ask a question, your Honor?

15 THE COURT: Of course you may.

16 MR. CARNEY: Will the judgment not be entered  
17 until the amount of restitution is determined? In other  
18 words, there's a time limit in which I have to file a  
19 notice of appeal and I'm interpreting that the  
20 sentencing won't be completed until the restitution is  
21 decided.

22 THE COURT: That's a good point and I will say if  
23 the time should await the judgment, and since the  
24 government does seek restitution, I do allow the  
25 materials to be sealed, obviously available to

1       Mr. Carney. I do want to say one thing to the  
2 government about restitution.

3           If you go back to the motion to suppress, and I  
4 have utterly no issue and it bears not at all on my  
5 reasoning with the decision of the Court of Appeals, but  
6 I noted in a footnote a moral ambiguity here, and now  
7 that the government is seeking restitution, that  
8 ambiguity becomes more concerning and it's this. The  
9 way the government did this, that is enforced the law  
10 and apprehended Mr. Levin, of course was operating this  
11 pornographic site with malware such that they could  
12 trace it to Mr. Levin. Now had they shut it down as  
13 soon as they had it, he never, at least through this  
14 site, would have accessed these videos.

15           When I read the papers about restitution, that  
16 came back to me. I express no opinion because I've  
17 deferred ruling, but, Ms. Paruti, I'll -- and counsel,  
18 I'll be interested to be advised on that point.

19           But the short answer is that judgment will not  
20 enter until I've decided the issue of restitution. I'll  
21 schedule it within 90 days, but by agreement you two may  
22 agree to bring it forward so that it may be resolved.  
23 All right?

24           MR. CARNEY: Thank you.

25           THE COURT: He's remanded to the custody of the

1 marshals.

2 MS. PARUTI: I'm sorry, your Honor, may I just  
3 mention one other thing?

4 THE COURT: You may.

5 MS. PARUTI: The only issue of forfeiture in this  
6 case was the one laptop, um, that HP --

7 THE COURT: Forfeiture is decreed as requested.

8 MS. PARUTI: Thank you. There will be a motion  
9 filed on the docket.

10 THE COURT: Thank you.

11 MR. CARNEY: Will the defendant be held --  
12 continue to be held in Rhode Island -- Oh, in Plymouth,  
13 until he is brought back to the restitution hearing?

14 THE COURT: I really don't know, but it makes  
15 sense because, um -- well they'll have to transport him  
16 back for that hearing.

17 MR. CARNEY: Right. I wonder if we could suggest  
18 a date that would be convenient to the Court?

19 THE COURT: Why don't you do that.

20 (Pause.)

21 THE COURT: I was saying to Ms. Gaudet, for whom  
22 in a very literal sense I work, that I'm not trying to  
23 put it off, so we could get to it as soon as convenient  
24 for the parties. It's from Ms. Paruti, it's from your  
25 papers that reminds me I have to do it within 90 days,

1       that's the reason I suggested that time. I will address  
2       it more rapidly.

3                    MR. CARNEY: Would either the 4th or the 5th of  
4       November be convenient?

5                    THE COURT: Ms. Paruti, do those dates suit you?

6                    MS. PARUTI: I would say the 5th, if that's  
7       available to the Court.

8                    THE COURT: Thank you. I'll confer with  
9       Ms. Gaudet.

10                  It's on for a hearing on restitution on the 5th of  
11      November at 2:00 p.m.

12                  MR. CARNEY: Thank you, your Honor.

13                  THE COURT: Thank you. And I'll expect that he  
14       will be available for that hearing.

15                  MR. CARNEY: Your Honor, before you leave the  
16       bench, may I approach the Court ex parte, um, regarding  
17       a matter? I've alerted Ms. Paruti as to what that  
18       matter is.

19                  MS. PARUTI: I have no objection, your Honor.

20                  THE COURT: Fine. Of course you may.

21  
22                  AT THE SIDEBAR

23                  MR. CARNEY: This is related to a motion for funds  
24       that your Honor granted.

25                  (Hands to judge.)

1           THE COURT: Oh, yeah, I think I remember the issue  
2 here. I'll consider it. Thank you.

3           MR. CARNEY: Okay, thank you, your Honor.

4

5           (In open court.)

6           THE COURT: All right, we'll recess.

7           THE CLERK: All rise.

8           (Ends, 3:50 p.m.)

9

10           C E R T I F I C A T E

11

12           I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do  
13 hereby certify that the forgoing transcript of the  
14 record is a true and accurate transcription of my  
15 stenographic notes, before Judge William G. Young, on  
16 October 9, 2019, to the best of my skill and ability.

17

18

19           /s/ Richard H. Romanow 06-25-20

20           RICHARD H. ROMANOW Date

21

22

23

24

25